

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

City of Tuskegee, Alabama  
Macon County

Consent Order CSW- -09

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the City of Tuskegee (hereinafter “the City”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).

***STIPULATIONS***

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code §§ 22-22A-4(n) (2006 Rplc. Vol.), the Department is the State agency authorized to administer and enforce the provisions of the Solid

Waste and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).

3. The City of Tuskegee (hereinafter "City") was issued Solid Waste Permit No. 44-01 on April 30, 1987. This permit expired on August 3, 1992. However, the City is required to continue to conduct post-closure care pursuant to ADEM Admin. Code div. 335-13.

4. ADEM Admin Code r. 335-13-4-.23(2)(e) requires that environmental monitoring and treatment structures shall be protected and maintained in good repair and easily accessible.

5. ADEM Admin Code r. 335-13-4-.16(2)3.(iii) requires the City to submit for approval a remedial plan for explosive gas releases within 20 days of detection of exceedance of a permitted level of explosive gas.

6. On December 13, 2005, the Department received a groundwater monitoring report from the City.

7. On December 30, 2005, the Department issued a Notice of Violation (hereinafter "NOV") to the City for failing to sample well MW-1R due to the well being damaged.

8. The Department did not receive a response to the December 30, 2005, NOV.

9. On March 28, 2006, the Department received a quarterly explosive gas monitoring report from the City which indicated that exceedances had occurred.

10. On May 5, 2006, the Department issued a NOV to the City for explosive gas exceedances reported in the March 2006 quarterly explosive gas monitoring report.

11. The Department did not receive a response to the May 5, 2006, NOV.

12. On November 20, 2006, the Department received a quarterly explosive gas monitoring report from the City which indicated that exceedances had occurred.
13. On December 6, 2006, the Department issued a NOV to the City for explosive gas exceedances reported in the October 2006 quarterly explosive gas monitoring report.
14. The Department did not receive a response to the December 6, 2006, NOV.
15. On January 6, 2007, the Department received a groundwater monitoring report from the City.
16. On January 18, 2007, the Department issued a NOV to the City for failing to sample well MW-1R due to the well being damaged.
17. The Department did not receive a response to the January 18, 2007, NOV.
18. On March 14, 2007, the Department received an explosive gas monitoring report from the City which indicated that exceedances had occurred.
19. On April 18, 2007, the Department issued a NOV to the City for explosive gas exceedances reported in the March 2007 quarterly explosive gas monitoring report.
20. The Department did not receive a response to the April 18, 2007, NOV.
21. On May 22, 2007, the Department received a groundwater monitoring report from the City.
22. On June 8, 2007, the Department issued a NOV to the City for failing to sample well MW-1R due to the well being damaged.
23. The Department did not receive a response to the June 8, 2007, NOV.
24. On May 15, 2008, the Department received a groundwater monitoring report from the City.

25. On May 29, 2008, the Department issued a NOV to the City for failing to sample well MW-1R due to the well being damaged.

26. The Department did not receive response to the May 29, 2008, NOV.

### ***CONTENTIONS***

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the City; the economic benefit which delayed compliance may confer upon the City; the nature, extent and degree of success of the City's efforts to minimize or mitigate the effects of such violation upon the environment; the City's history of previous violations; and the ability of the City to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The City did not comply with provisions of ADEM Admin. Code div. 335-13. The Department has no evidence of any irreparable harm to the environment, any threat to human health, or any threat to the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: The City failed to monitor groundwater and failed to propose explosive gas corrective actions in a manner commensurate with applicable Solid Waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the City has realized a significant economic benefit as a result of the violations noted. However, the City did not incur costs associated with proper groundwater sampling and costs associated with remedial actions for explosive gas in accordance with Division 13 Regulations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the violations noted.

E. HISTORY OF PREVIOUS VIOLATIONS: The City has a history of similar violations.

F. THE ABILITY TO PAY: The City has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

#### ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the City, along with the Department, desires to resolve and settle the alleged violations cited above.

The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the City agree to enter into this Order with the following terms and conditions:

A. Pursuant to Ala, Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.) City of Tuskegee agrees to pay to the Department a civil penalty in the total amount of \$25,000.00, payable in monthly installments, to be paid in full within 365 days from the execution date of this Order.

B. Payments of the penalty shall be by cashier or certified check made payable to the "Alabama Department of Environmental Management" and remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference City of Tuskegee Waste Disposal Facility's name and address, and the ADEM Consent Order number of this action.

C. The City shall repair or replace MW-1R prior to the March 2009 groundwater sampling event.

D. The City shall commence expanded quarterly explosive gas monitoring 50 feet outside of the current monitoring point locations through September 2009. If explosive gas exceedences (>25% LEL) are not detected at any of the expanded monitoring locations during any of the quarterly explosive gas monitoring events, the City shall begin

installation of the approved gas venting system within 60 days of October 1, 2009. The gas venting system installation shall be completed no later than January 31, 2010. However, if any explosive gas exceedances (>25% LEL) are detected during any quarterly monitoring event at any of the expanded gas monitoring locations, the City shall begin installation of the approved gas venting system immediately with completion of the system being no later than 60 days after the date of detection of the initial explosive gas exceedance.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The City agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the City agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The City also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the City shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event

arising from causes that are not foreseeable and are beyond the reasonable control of the City, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the City) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, State, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of 10 working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of the City, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; the City shall not object to such future orders, litigation, or enforcement

action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

J. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the City does hereby waive any hearing on the terms and conditions of this Consent Order.

K. The parties agree that this Order shall not affect the City's obligation to comply with any federal, State, or local laws or regulations.

L. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

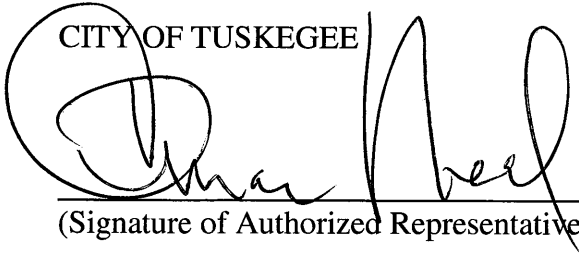
M. The parties agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The parties agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The parties agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the City of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CITY OF TUSKEGEE



(Signature of Authorized Representative)

Omar Neal

(Printed Name)

Mayor

(Printed Title)

March 12, 2009

(Date Signed)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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Onis "Trey" Glenn, III  
(Director)

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(Date Signed)